

CITY COUNCIL AGENDA

APRIL 29, 2008

SYNOPSIS

PETE CONSTANT
FORREST WILLIAMS
SAM LICCARDO

KANSEN CHU
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3

DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO
MADISON P. NGUYEN
DAVID D. CORTESE,
MAYOR
JUDY CHIRCO
NANCY PYLE

DISTRICT 6
DISTRICT 7
DISTRICT 8

DISTRICT 9
DISTRICT 10

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On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**
9:00 a.m. Closed Session, Call to Order in Council Chambers
Absent Council Members: None.

1:30 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: None.
- **Invocation (District 4)**
IndepenDance Company from Independence High School performed a dance routine to “Imagine” by John Lennon.
- **Pledge of Allegiance**
Mayor Reed led the Pledge of Allegiance.
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved with item 3.2 deferred to May 6, 2008, and Items 3.5 and 9.1(b) deferred to May 20, 2008.
- **Closed Session Report**
City Attorney Doyle disclosed the following Closed Session actions of April 29, 2008:
 - A. **Authority to initiate Litigation:**

Authority to initiate litigation was given in one matter. The names of the action and the defendant, as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

Council Vote:

Ayes:	Campos, Chirco, Chu, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.
Noes:	Constant; Oliverio.
Disqualified:	None.
Absent:	None.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring June 20th, 2008 as “Iranian Human Rights Day” in the City of San José. (Liccardo)
Dropped.
- 1.2 Presentation of a proclamation declaring May 1st, 2008 as “Paint Our Town Purple Day” in support of the Relay for Life in the City of San José. (Pyle/Williams/Oliverio)
Mayor Reed, Council Member Pyle and Council Member Oliverio recognized May 1st, 2008 as “Paint Our Town Purple Day” in support of the Relay for Life in the City of San José.
- 1.3 Presentation of a proclamation declaring April 30, 2008 as “El día de los niños / El día de los libros – Children’s Day / Book Day” in the City of San José. (Mayor/Campos/Oliverio)
(Rules Committee referral 4/23/08)
Mayor Reed, Council Member Campos, Council Member Chu, Council Member Oliverio and Library Director Jane Light presented a proclamation declaring April 30, 2008 as “El día de los niños / El día de los libros – Children’s Day / Book Day” in the City of San José.

2. CONSENT CALENDAR

- 2.1 **Approval of Minutes.**
There were none.
- 2.2 **Final adoption of ordinances.**
There were none.
- 2.3 **Approval of an agreement for Environmental Analysis Consulting Services at the Airport.**

Recommendation: Approval of a consultant agreement with David J. Powers & Associates, Inc. for Airport environmental analysis services in an amount not-to-exceed \$250,000 and for the term of July 1, 2008 to June 30, 2011. CEQA: Resolution Nos. 67380 and 71451, File No. PP08-045. (Airport)

Approved.

- 2.4 **Approval of a Settlement Agreement and Release with Tadco Supply, Inc. et al.**

Recommendation: Adoption of a resolution authorizing the City Attorney to execute the Settlement Agreement and Release with Tadco Supply, Inc., considered by the City Council during the closed session held on April 8, 2008. (City Attorney's Office)

Deferred to 5/6/08 per City Attorney.

2. CONSENT CALENDAR

2.5 Approval to negotiate and execute vision service contracts.

Recommendation: Adoption of a resolution authorizing the City Manager to negotiate and execute vision service contracts with EyeMed Vision Care and Vision Service Plan for July 1, 2008 through June 30, 2012. CEQA: Not a Project. (Human Resources)

Resolution No. 74336 adopted.

2.6 Approval to change the title classification of Executive Assistant in the City Auditor's Office.

Recommendation: Adoption of a resolution amending the City of San José Pay Plan effective March 11, 2008 to change the title for the classification of Executive Assistant U (8021) (formerly Executive Assistant to the City Auditor). CEQA: Not a Project. (Human Resources)

Resolution No. 74337 adopted.

2.7 Approval of a Contract Change Order for the Airport North Concourse Building Foundation and Utility Tunnel Concrete, Package 02A Project.

Recommendation: Approval of Contract Change Order # 14 for the Norman Y. Mineta San José International Airport North Concourse Building Foundation and Utility Tunnel Concrete, Package 02A with Gonsalves & Santucci, Inc., dba Conco, to use savings from the total base bid reductions under previously approved change order numbers 5, 8 and 9 to pay for the cost of additional work necessary to complete the project in the total amount of \$166,114, at no increase in the total contract amount. CEQA: Resolution Nos. 67380 and 71451, File No. PP08-044. (Public Works/Airport)

Approved.

2.8 Approval to summarily vacate a portion of Coleman Avenue between Seymour and Hobson Streets.

Recommendation: Adoption of a resolution to summarily vacate a portion of the Public Service Easement lying in the northeasterly quadrant of Lot 16 of Tract 9707 at the Southside of Coleman Avenue between Seymour and Hobson Streets. CEQA: Resolution No. 72369. Council District 3. (Public Works)

Resolution No. 74338 adopted.

2.9 Acceptance of the Proposed Fiscal Year 2007/08 – 2012/13 Workplan for Rule 20A and Rule 20B In-Lieu Fee Underground Utility Program.

Recommendation: Acceptance of the report on the proposed fiscal year 2007/08 - 2012/13 Workplan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program. CEQA: Not a Project. (Public Works)

Report Accepted.

2. CONSENT CALENDAR

2.10 Request for an excused absence for Councilmember Chirco.

Recommendation: Request for an excused absence for Councilmember Chirco from the Regular Meeting of the Neighborhood Services and Education Committee on April 10, 2008 due to illness. (Chirco)
(Rules Committee referral 4/16/08)

Excused.

2.11 Request for an excused absence for Councilmember Constant.

Recommendation: Request for an excused absence for Councilmember Constant from the Closed Session and Afternoon Meeting of the City Council on April 15, 2008 due to a death in the family. (Constant)
(Rules Committee referral 4/16/08)

Excused.

3. STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report) Report Accepted.

3.2 Report of the Rules and Open Government Committee – April 16, 2008 Mayor Reed, Chair Deferred to May 6, 2008 per Orders of the Day.

3.3 Report of the Public Safety, Finance and Strategic Support Committee – April 17, 2008 Councilmember Nguyen, Chair The Public Safety, Finance and Strategic Support Committee Report and Actions of April 17, 2008 were accepted.

3.4 Change the Special Eligibility Requirement that one member of the Elections Commission be an Attorney-At-Law.

Recommendation: As recommended by the Elections Commission, approve an ordinance amending Section 2.08.1630 of Chapter 2.08 of Title 2 of the San José Municipal Code to change the special eligibility requirement that one member of the Elections Commission be an attorney-at-law licensed to practice in the State of California, and to make technical changes. (City Clerk)
(Rules Committee referral 4/16/08)

Ordinance No. 28295 passed for publication.

3. STRATEGIC SUPPORT SERVICES

3.5 Actions related to the sale of surplus City-owned property at 410 Park Avenue.

Recommendation: Adoption of a resolution:

- (a) Declaring the 0.19 acre City-owned property and building at 410 Park Avenue surplus to the needs of the City;
- (b) Approving the sale agreement with an adjacent property owner, Park Delmas Investors, LLC, in the amount of \$450,000; and
- (c) Authorizing the Director of Public Works to execute all documents necessary to complete the transfer of the property; and
- (d) Directing the City Manager to return with appropriation actions to allocate proceeds from this sale to address the City's Deferred Maintenance and Infrastructure Backlog.

CEQA: Resolution No. 72767. Council District 3. (Public Works)

Deferred to May 20, 2008 per Orders of the Day.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee

Councilmember Pyle, Chair

No Report.

4.2 Actions related to the Fairgrounds Senior Housing Apartments.

Recommendation: Adoption of a resolution:

- (a) Authorizing the issuance of tax-exempt multifamily housing revenue bonds designated as "City of San José Multifamily Housing Revenue Bonds (Fairgrounds Senior Housing Apartments), Series 2008B" in an aggregate principal amount not to exceed \$26,000,000 (the "Bonds");
- (b) Approving a loan of Bond proceeds to Fairgrounds Senior Housing, L.P., a California limited partnership, for financing a portion of the costs of constructing the Fairgrounds Senior Housing Apartments located at 520 Tully Road in San José;
- (c) Approving in substantially final form the Bonds, Trust Indenture, Loan Agreement, Regulatory Agreement, Declaration of Restrictive Covenants and Assignment of Deed of Trust and Loan Documents and Bond Purchase Agreement; and
- (d) Authorizing the City Manager or authorized designee to execute and, as appropriate, negotiate, execute and deliver these bond documents and other related bond documents as necessary.

CEQA: Resolution No. 71359, County Fairgrounds Housing EIR. Council District 7. (Finance/Housing)

(Deferred from 4/22/08 – Item 4.2)

Resolution No. 74339 adopted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Rezoning real property located on the southeast corner of Stevens Creek and South Winchester Boulevard.

Recommendation: Consideration of an ordinance rezoning the real property located on the southeast corner of Stevens Creek and South Winchester Boulevard (Santana Row) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to (1) modify perimeter setbacks and (2) change allowed uses, including the elimination of previously entitled 22,500 square feet of retail uses, a 190 room hotel and 229 residential dwelling units. This proposal would allow the addition of 160,000 square feet of office/commercial uses on a 40.78 gross acre site (FRIT San José Town & Country Village LLC, c/o Randy Paul, Developer). Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. CEQA: EIR Resolution No. 68210 and Addendum thereto.

PDC07-095 – District 6

[Continued from 4/22/08 - Item 11.1(d)]

Deferred to 5/6/08 per Applicant's Request.

5. NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee Councilmember Chirco, Chair No Report.

6. TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation and Environment Committee Councilmember Williams, Chair No Report.

6.2 Report on bids and award of contract for the Remove and Replace Asphalt Concrete Pavement 2008 Project.

Recommendation: Report on bids and award of contract for the Remove and Replace Asphalt Concrete Pavement 2008 Project to the low bidder, Top Grade Construction, Inc., in the amount of \$1,445,800, and approval of a 5% contingency in the amount of \$73,000. CEQA: Exempt, File No. PP04-039. (Transportation)

Report Accepted.

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

9.1 Acceptance of actions related to Downtown Issues.

Recommendation:

- (a) Actions related to the Downtown Hospitality Zone as follows:
 - (1) City Council and Redevelopment Agency Board acceptance of the attached Downtown Hospitality Zone Assessment (HZA) Report produced by the Responsible Hospitality Institute (RHI); and,
 - (2) City Council approval of the creation of a position within the City Manager's Office to focus on Downtown related issues highlighted in the attached Downtown Hospitality Zone Assessment draft work plan and to work closely with a community-based advisory group to facilitate the action items recommended in the HZA report to ensure that new and existing policies are working to make downtown a vibrant, hospitable and safe entertainment center.
 - (3) Provide direction on funding options for this position for consideration in the upcoming budget process (2008-2009), including the possibility of fees from entertainment uses offsetting a portion of the costs incurred.

CEQA: Not a Project. Council District 3.

Accepted.

- (b) Actions related to Permitting Promoters as follows:
 - (1) Approval of an ordinance by the City Council:
 - (a) Amending Chapter 6.58 of Title 6 of the San José Municipal Code to require operators of public dancehall venues to use permitted promoters and to hold persons required to be permitted under Chapter 6.58 of the Code, but not so permitted responsible for violations of Chapter 6.58 of the Code;
 - (b) Amending Chapter 6.60 of Title 6 of the Code to require operators of public entertainment business venues to use permitted promoters and to hold persons required to be permitted under Chapter 6.60, but not so permitted, responsible for violations of Chapter 6.60 of the Code ; and
 - (c) Adding Chapter 6.62 to Title 6 of the Code to require promoter permits and setting regulations and conditions on promoter permits.
 - (2) Adoption of a resolution by the City Council amending the Administrative Citation Schedule of Fines for Certain Violations of the Code to amend and establish fines for certain violations of Code Chapters 6.58 (Public Dancehalls) and 6.60 (Public Entertainment Permit) and to establish fines for violations of Code Chapter 6.62 (Event Promoters), and repealing Resolution No. 74033, to be effective July 1, 2008.

CEQA: Not a Project. Council District 3.

Deferred to 5/20/08 per Mayor and District 3.

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

9.1 Acceptance of actions related to Downtown Issues. (Cont'd.)

- (c) Actions related to Street Vendors as follows:
 - (1) City Council direction to staff to develop an ordinance:
 - (a) Repealing the Flower Vendor Ordinance set forth in Chapter 6.30 of Title 6 of the San José Municipal Code;
 - (b) Amending the Peddler Permit Ordinance, Chapter 6.54 of Title 6 of the San José Municipal Code, to include regulation of flower street vendors; extend the hours during which approved location peddlers can peddle; authorize the City Manager to make and promulgate time, place and manner regulations reasonably necessary to promote economic growth and create a more vibrant Downtown; and update definitions in the Chapter 6.54 to ensure consistency of terms within Title 6 of the San José Municipal Code; and
 - (c) Amending the Downtown Special Events Ordinance, Chapter 6.55 of Title 6 of the San José Municipal Code, to reduce the area within which approved location peddler permits may be suspended during a designated Downtown Special Event by limiting the suspension area to the Special Event Boundary; authorize peddlers within the Special Event Boundary to peddle at alternative, temporary locations outside the Boundary for the duration of the Downtown Special Event; and clarify the exceptions to the requirement for Event Organizers to provide approved location peddlers an equal opportunity to participate in the Downtown Special Event.
 - (2) City Council and Redevelopment Agency acceptance of staff's recommended process to assist peddlers wishing to operate as approved location peddlers in the Downtown Vendor Program Area.
- CEQA: Resolution No. 72767. Council District 3.
- Approved.**
- (d) Actions related to Sidewalk Dining as follows:
 - (1) Approval of an ordinance by the City Council amending Part 12 of Chapter 20.100 of Title 20 of the San José Municipal Code, the provisions related to sidewalk cafe permits, to allow the Director of Planning to issue a sidewalk cafe permit to an establishment located in the Downtown that also has an entertainment permit and is designated as a code public eating establishment pursuant to the provisions of Title 6 of the San José Municipal Code, and to retail establishments, to reduce the requirement for full food service, to include provisions related to the revocation of such permits, and to clarify the definition of a sidewalk café.

(Item continued on the next page)

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

9.1 Acceptance of actions related to Downtown Issues. (Cont'd.)

- (d) CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval with 12:00 a.m. (midnight) closing and Planning Commission recommends approval with 2:00 a.m. closing and continuation of Downtown Working Group (4-3-0). Council District 3.
(Continued from 4/22/08 – Item 11.4)

Ordinance No. 28296 passed for publication, as amended with sidewalk cafés to close at 2 a.m. Staff recommendations approved as modified: (a) Conditions/permits to expire after 18 months; (b) Council to evaluate the effectiveness of the ordinance 12 months after enactment; (c) Staff to take an update to the Community Economic Development Committee in 6 months; (d) Other directions to the City Manager as outlined in the Joint Memorandum from Mayor Reed and Council Members Liccardo, Williams and Oliverio, dated April 24, 2008.

Noes: Constant, Chu, Liccardo; Reed.

- (e) City Council and Redevelopment Agency Board acceptance of the Downtown Working Group's final report. CEQA: Not a Project. Council District 3.

Report Approved.

- (f) City Council and Redevelopment Agency Board acceptance of the evaluation of the Soft Closing Pilot Program. CEQA: Exempt, File No. PP07-117. Council District 3.

(City Manager's Office/Redevelopment Agency)

Report accepted, with direction to the City Manager as outlined in Recommendation #2 of the memorandum from Mayor Reed and Council Members Liccardo, Williams and Oliverio, dated April 24, 2008, including modification to add: "Any fee should include only the additional costs incurred by the City for services necessary to support or respond to those establishments with relevant permits".

● Notice of City Engineer's Pending Decision on Final Maps

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9715	Southwest corner of Chynoweth Ave and Cedar Grove Circle	2	Chynoweth Development LLC	7 Lots / 6 Units	Single Family Detached	Approve

- **Notice of City Engineer's Pending Decision on Final Maps**

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9974	East side of Radio Avenue, 160 feet north of Lincoln Court	6	Radio Homes, LLC	15 Lots / 14 Units	Single Family Attached and Detached

- **Notice of City Engineer's Award of Construction Projects**

- **Open Forum**

- (1) **Ross Signorino stated that he has no public disclosures to be made.**
- (2) **Mark Trout expressed religious viewpoints and concerns about military veterans' health.**

- **Adjournment**

The Council of the City of San José was adjourned at 6:50 p.m.

8 JOINT REDEVELOPMENT AGENCY/COUNCIL

The Joint Redevelopment Agency Board convened to consider Item 8.1 in a Joint Session.

8.1 City Council and Agency Board approval of actions related to the Convention Center Phase 1 Expansion Project.

Recommendations:

- (a) City Council and Redevelopment Agency Board acceptance of the recommended expansion concept design and direction for the Redevelopment Agency to proceed with schematic design of the project based on a potential budget estimate of \$250,000,000; and,
- (b) Adoption of a resolution by the Redevelopment Agency Board approving a proposed adjustment to the Agency's FY 2007-2008 Adopted Capital Budget, shifting \$3,000,000 from FY 2008-2009 for the Convention Center Expansion Phase 1 project line to cover LMN Architects and Gilbane Building Company contracts in the Merged Redevelopment Area, and amending the FY 2007-2008 Agency appropriations resolution.
Redevelopment Agency Resolution No. 5824 adopted.
- (c) Redevelopment Agency Board approval of the second amendment to the agreement with LMN Architects, adding \$4,250,000, for a total contract amount of \$5,550,000 to complete schematic design of the overall project, update the cost estimate based on the schematic design, produce necessary design documents and provide bid support and construction contract administration for the central utility plant replacement project, and extending the term of the agreement one year to December 31, 2009; and,
- (d) Redevelopment Agency Board approval of the first amendment to the agreement with Gilbane Building Company, adding \$1,475,000, for a total contract amount of \$1,650,000 for preconstruction services related to schematic design of the overall project and preconstruction, bid support and construction management services related to the central utility plant replacement project, and extending the term of the agreement one year to December 31, 2009.

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8 JOINT REDEVELOPMENT AGENCY/COUNCIL

- 8.1** CEQA: Resolution No. 72767. On June 21, 2005, the City Council made findings in connection with the adoption of the Downtown Strategy 2000. The Program EIR for the Downtown Strategy 2000 addressed the Convention Center expansion project at a programmatic, or highly conceptual, level. Subsequent environmental review will be completed based on the more detailed project description that will be an outcome of the City Council/Agency Board's design direction and other approvals requested in this memorandum. The City Council/Agency Board's ultimate action to authorize the Convention Center expansion would be informed by this subsequent environmental review. **[MERGED]**

Approved, with two amendments to Staff's recommendation as follows:

- (1) Staff to return to Council with a progress report.**
- (2) Progress report provide evidence that specific target market is expanding as indicated in initial market analyses.**

Noes: Oliverio.

The Joint Redevelopment Agency meeting adjourned at 3:25 p.m.